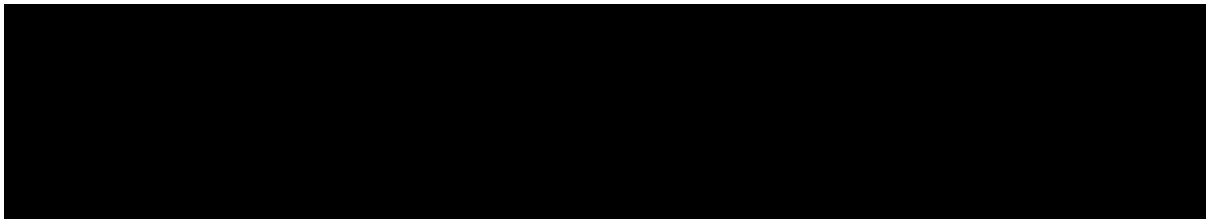


Exhibit 3



1 UNITED STATES COURT OF APPEALS, NINTH CIRCUIT

2
3 NETLIST INC.,

4 a Delaware corporation,

5 Plaintiff-Appellee,

6 vs.

Case No.: 22-55209

7 SAMSUNG ELECTRONICS CO., LTD.,

8 a Korean corporation,

9 Defendant-Appellant.

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13 TRANSCRIPT OF AUDIO-RECORDED ORAL ARGUMENT

14 Before: M. SMITH and DESAI, Circuit Judges, and AMON,

15 District Judge

16 June 8, 2023

17 1:36 p.m.

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19
20
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22 Transcribed By:

TERRI NESTORE

23 CSR No. 5614, RPR, CRR

24
25 Job No. 6169798

Page 1

<p>1 Is it because of this unlimited supply obligation 2 or is it because that's the way the parties had been doing 3 this for years and years? 4 So with that, let me reserve the rest. 5 JUSTICE SMITH: Reserve your time. 6 MR. YODER: Thank you very much. 7 JUSTICE SMITH: Very welcome. All right. 8 Mr. Ashley. 9 MR. ASHLEY: Almost good afternoon, Your Honors. 10 JUSTICE SMITH: Pretty close. 11 MR. ASHLEY: May it please the court, Matt Ashley 12 for Netlist. 13 This case begins and ends with the plain language 14 of the JDLA and New York's settled contract interpretation 15 principles. You're correct, you don't look outside of 16 this contract to determine whether there is ambiguity. 17 And I want to focus first on the key contractual 18 provision in the case, which is Section 6.2. 19 Section 6.2 reads, and I'll quote it to you: 20 Samsung will supply NAND and DRAM products to Netlist, on 21 Netlist request, at a competitive price. That is 22 succinct, clear and unambiguous language. 23 JUSTICE SMITH: But it is, if you will, 24 interpreted by the rest of the contract including, for 25 example, the recital that Mr. Yoder just gave, and when</p> <p style="text-align: right;">Page 18</p>	<p>1 competitive prices that Samsung was selling them for; is 2 that correct. 3 MR. ASHLEY: That's absolutely correct. 4 And then one of your questions to Counsel was you 5 referenced, Your Honor, the term "JDP." 6 That's a point I wanted to make. 7 They stress, both in their moving and in their 8 reply brief, sort of the linchpin of their argument about 9 creating an ambiguity is to say, well, Section 6.2 is part 10 of Section 6, which is supply of components, and that's 11 why I was tying you to that first "whereas" clause; they 12 say you should interpret "components" to be components for 13 the JDP. Well, it doesn't say supply of components for 14 the JDP. 15 JUSTICE AMON: But isn't the controller in the 16 first part a JDP controller? I mean that is used just for 17 this particular development; is that correct? 18 MR. ASHLEY: In Section 6.1. 19 JUSTICE AMON: In Section 6.1. 20 MR. ASHLEY: Yes. 21 JUSTICE AMON: That controller is limited to this 22 project, correct? It's not something else? 23 MR. ASHLEY: It's limited to -- it's limited to 24 NVDIMM-P, which is supposed to be the jointly developed 25 product.</p> <p style="text-align: right;">Page 20</p>
<p>1 you look at that in its totality, now it's pretty 2 ambiguous to me. Why am I wrong? 3 MR. ASHLEY: You're wrong in part because he read 4 you the wrong recital. 5 JUSTICE SMITH: Ah. Let's hear the right one. 6 MR. ASHLEY: He didn't read the first recital of 7 the contract, which says: Whereas Samsung develops and 8 manufactures, among other things, memory components and 9 memory modules, and Netlist develops and manufactures 10 memory components and memory modules. 11 So it's speaking to the products that these 12 companies produce, and that ties into the supply 13 obligation later that for Netlist, is expressly limited in 14 Section 6.1 to NVDIMM-P controllers, and that for Samsung 15 is not limited to either NVDIMM-P controllers or their 16 current position, the joint development project. 17 JUSTICE AMON: You friend on the other side said 18 that there was a relationship with respect to the sale of 19 these NAND and DRAM products before this agreement. It's 20 my understanding that there was no agreement, there was no 21 contract that obligated Samsung to sell these parts to 22 Netlist, and in fact it was pretty ad hoc and requests 23 would be made and not fulfilled, or backlogged, and in 24 fact part of this agreement was to ensure that when those 25 parts were ordered, they would in fact be supplied at the</p> <p style="text-align: right;">Page 19</p>	<p>1 JUSTICE AMON: That's the jointly developed 2 product. 3 MR. ASHLEY: Correct. 4 JUSTICE AMON: So under heading of Supply of 5 Components, the first is clearly for the JDP project. Why 6 wouldn't you reasonably read the second clause as also 7 relying or involving that development project? 8 MR. ASHLEY: For two reasons; it's not there and 9 they could have put it there; second, even the reference 10 to the NVDIMM-P is not to the joint development project, 11 it's to that product that's supposed to come out of it. 12 So you have to -- 13 JUSTICE AMON: I thought you just told me 14 Section 6.1 was specifically directed to the project. 15 MR. ASHLEY: It's directed to NVDIMM-P, which is 16 the product that's supposed to come out of the project. 17 There are defined terms in this agreement for the 18 project, which is the joint development project, or JDP; 19 there's the joint -- the developed product, which is the 20 NVDIMM-P product; and those defined terms are used 21 throughout this agreement when the provisions intend to 22 limit themselves to, for instance, NVDIMM-P or the joint 23 development project. 24 And I'll give you an example. Your Honor asked 25 whether or not Samsung's position was whether or not they</p> <p style="text-align: right;">Page 21</p>